LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JUN 4 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1965

No. 215

LEON ADJMI and JOSEPH ADJMI,
Petitioners,

v.

UNITED STATES OF AMERICA.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

JACOB KOSSMAN,
1325 Spruce Street,
Philadelphia, Pa. 19107
Counsel for the Petitioners.

International, 711 So. 50th St., Phila., Pa. 19143

INDEX.

	Page
Opinion Below	1
Jurisdiction	1
Questions Presented	2
Statutes Involved	2
Statement	3
A. The Present Indictment	3
B. Summary of Prosecution Evidence Directly Relating to the Claims Submitted in Respect of the Fire at 132 East Flagler Street Alleged in the Indictment	4
C. Colloquy Over Admissibility of Evidence Concerning Other Fires to Show Intent of the Adjmis; Other Indictments of the Adjmis Involving Those Other Fires	5
D. Evidence Regarding Other Fires in Which the Adjmis Were Involved	7
E. The United States Attorney Transforms the Prosecution Into One for a Master Plan for One Continuous Scheme of Conspiracy Involving Four Fires	9
F. Charge; Verdict and Sentences; Appeal	12
Reasons for Granting the Writ	15
Conclusion	19
Appendix A—Opinion Below and Judgment	21
Appendix B—Order on Petition for Rehearing	25

TABLE OF CASES CITED.

	Page
American Medical Ass'n v. United States, 130 F. 2d 233 (D. C. Cir.), affirmed on other grounds, 317 U. S. 519	16
Bruno v. United States, 308 U. S. 287	18
Coffin v. United States, 156 U. S. 432	18
Cole v. Arkansas, 333 U. S. 196	17
Davis v. United States, 160 U. S. 469	18
Deutch v. United States, 367 U. S. 456	18
Egan v. United States, 137 F. 2d 369 (C. A. 8)	16
Griffin v. California, No. 202, decided April 2, 1965	18
Kotteakos v. United States, 328 U. S. 750	17
Perez v. United States, 297 F. 2d 12	18
Poretto v. United States, 196 F. 2d 392 (C. A. 5)	18
Price v. United States, 200 F. 2d 652	19
Stewart v. United States, 366 U. S. 1	18
Stirone v. United States, 361 U. S. 212	17
United States v. Campagna, 146 F. 2d 524 (C. A. 2), certiorari denied, 324 U. S. 867	16
Weiss v. United States, 122 F. 2d 675 (C. A. 5), certiorari denied, 314 U. S. 687	5

STATUTES AND AUTHORITIES CITED.

	Page
18 U. S. C. § 371	2, 3
18 U. S. C. § 1341	2, 3
28 U. S. C. § 1254(1)	1
2 Wigmore, Evidence [3d ed. 1940] §§ 300, 302, 321, 340-341	16

IN THE

Supreme Court of the United States.

October Term, 1964.

No.

LEON ADJMI AND JOSEPH ADJMI,
Petitioners,

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

LEON ADJMI and JOSEPH ADJMI, your petitioners, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above-entitled matter on March 31, 1965.

OPINION BELOW.

The opinion of the court below (Appendix A, *infra*, pp. 21-23) is reported at 343 F. 2d 164.

JURISDICTION.

The judgment of the court below (Appendix A, *infra*, p. 24) was entered on March 31, 1965. A timely petition for rehearing was denied on May 13, 1965 (Appendix B, *infra*, p. 25). The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

QUESTIONS PRESENTED.

1. Whether it was proper to transform a prosecution for mail fraud and conspiracy in connection with insurance claims submitted through the mails in respect of a single fire, as alleged in the indictment on trial, into a prosecution for mail fraud and conspiracy in connection with insurance claims submitted through the mails in respect of four fires, three of which were not alleged in the indictment on trial but had been alleged in three other and separate indictments, consolidation of which with the indictment on trial had earlier been denied.

2. Whether, when a trial judge charges that "The view of the Grand Jury was that if the same evidence which was before the Grand Jury was repeated at the trial, unless it is repudiated in some way or overcome in some way, the defendant ought to be convicted," and when after objection by both prosecution and defense counsel the trial judge then charges further, "I withdraw that, because the rule is the defendants, if they testify at all, they don't have to rebut anything," the burden of going forward to disprove the allegations of the indictment is improperly cast upon defendants who do not testify.

STATUTES INVOLVED.

Petitioners were convicted of conspiracy in violation of 18 U. S. C. § 371 and of mail fraud in violation of 18 U. S. C. § 1341. Since nothing turns on the terms of either provision, they are not set out here.

STATEMENT.

These petitioners are the sole survivors of four individual defendants and one corporate defendant named in the indictment, all of whom were convicted following a trial. The corporate defendant did not appeal; the judgment as to the defendant Charles Adjmi was reversed by the court below; and the defendant Erwin Cohen died following affirmance but before the filing of a petition for rehearing.

A. The Present Indictment.

The indictment here in question (No. 63-115-T-Cr) contained three counts.

Count One (R. 3-4) alleged that, in violation of 18 U. S. C. § 1341, the four individuals and the corporation, J. & C. A. Corporation, devised a scheme to defraud certain insurance companies by falsely overvaluing the property located at 132 East Flagler Street, Miami, Florida, operated by Cohen; by falsely overstating the amount of loss suffered in a fire on those premises on September 25, 1958; and by depositing the resultant claim for loss in the mails on November 28, 1958.

Count Two (R. 4-5) repeated the same allegations in respect of another mailing on December 2, 1958.

Count Three (R. 5-6) charged only the four individuals for conspiracy contrary to 18 U. S. C. § 371, alleging that they conspired together to devise a scheme to obtain money and property by means of the false pretenses set forth in the substantive counts, and to violate 18 U. S. C. § 1341 by so doing.